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In The
Supreme Court of the United States

DENEICE A. MAYLE, Warden,

Petitioner,

v.

JACOBY LEE FELIX,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE STATES OF ARIZONA, ALASKA, ARKANSAS, COLORADO, DELAWARE, FLORIDA, HAWAII, IDAHO, ILLINOIS, IOWA, KANSAS, MARYLAND, MASSACHUSETTS, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NEVADA, OHIO, OKLAHOMA, OREGON, PENNSYLVANIA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, VIRGINIA, WEST VIRGINIA, WASHINGTON, WISCONSIN, WYOMING, AND THE COMMONWEALTH OF PUERTO RICO AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

TERRY GODDARD
Attorney General of the
State of Arizona

MARY O'GRADY
State Solicitor General

RANDALL M. HOWE
Criminal Appeals Section Chief

MICHAEL O'TOOLE
Assistant Attorney General and
(*Counsel of Record*)
1275 W. Washington St.
Phoenix, AZ 85007
(602) 542-8593

Of Counsel:

DAN SCHWEITZER
750 First St., N.E.
Washington, D.C. 20002
(202) 326-6010

[Additional Counsel Listed On Inside Cover]

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

SCOTT J. NORDSTRAND
Acting Attorney General
of Alaska
P.O. Box 110300
Diamond Courthouse
Juneau, AK 99811-0300

MIKE BEEBE
Attorney General of Arkansas
200 Tower Building
323 Center Street
Little Rock, AR 72201-2610

JOHN W. SUTHERS
Attorney General of Colorado
1525 Sherman Street,
7th Floor
Denver, CO 80203

M. JANE BRADY
Attorney General of Delaware
DEPARTMENT OF JUSTICE
820 North French Street
Wilmington, DE 19801

CHARLES J. CRIST, JR.
Attorney General of Florida
The Capitol, PL 01
Tallahassee, FL 32399-1050

MARK J. BENNETT
Attorney General of Hawaii
425 Queen Street
Honolulu, HI 96813

LAWRENCE G. WASDEN
Attorney General of Idaho
P.O. Box 83720
Boise, ID 83720-1000

LISA MADIGAN
Attorney General of Illinois
James R. Thompson Center
100 West Randolph Street,
12th Floor
Chicago, IL 60601

THOMAS J. MILLER
Attorney General of Iowa
Hoover State Office Building
1305 East Walnut
Des Moines, IA 50319

PHILL KLINE
Attorney General of Kansas
120 S.W. 10th Avenue,
2nd Floor
Topeka, KS 66612-1597

J. JOSEPH CURRAN, JR.
Attorney General
of Maryland
200 Saint Paul Place
Baltimore, MD 21202-2202

THOMAS F. REILLY
Attorney General
of Massachusetts
One Ashburton Place
Boston, MA 02108

JIM HOOD
Attorney General
of Mississippi
DEPARTMENT OF JUSTICE
P.O. Box 220
Jackson, MS 39205-0220

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri
Supreme Court Building
207 West High Street
Jefferson City, MO 65101

MIKE MCGRATH
Attorney General of Montana
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

JON BRUNING
Attorney General of Nebraska
State Capitol
P.O. Box 98920
Lincoln, NE 68509-8920

BRIAN SANDOVAL
Attorney General of Nevada
Nevada Department
of Justice
100 North Carson Street
Carson City, NV 89701

JIM PETRO
Attorney General of Ohio
150 East Gay Street,
23rd Floor
Columbus, OH 43215

W.A. DREW EDMONDSON
Attorney General of Oklahoma
2300 North Lincoln
Boulevard, Suite 112
Oklahoma City, OK 73105

HARDY MYERS
Attorney General of Oregon
1162 Court Street NE
Salem, OR 97301

THOMAS W. CORBETT, JR.
Attorney General
of Pennsylvania
16th Floor, Strawberry Square
Harrisburg, PA 17120

ROBERTO J. SÁNCHEZ RAMOS
Secretary of Justice
Commonwealth of
Puerto Rico
P.O. Box 192
San Juan, PR 00902-0192

HENRY D. MCMASTER
Attorney General
of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

LAWRENCE E. LONG
Attorney General
of South Dakota
500 East Capitol Avenue
Pierre, SD 57501-5070

PAUL G. SUMMERS
Attorney General
of Tennessee
P.O. Box 20207
Nashville, TN 37243

GREG ABBOTT
Attorney General of Texas
Capitol Station
P.O. Box 12548
Austin, TX 78711-2548

MARK L. SHURTLEFF
Attorney General of Utah
Utah State Capitol Complex
East Office Building,
Suite 320
Salt Lake City, UT
84114-2320

JUDITH WILLIAMS JAGDMANN
Attorney General of Virginia
900 East Main Street
Richmond, VA 23219

ROB MCKENNA
Attorney General
of Washington
1125 Washington Street
P.O. Box 40100
Olympia, WA 98504-0100

DARRELL V. MCGRAW, JR.
Attorney General
of West Virginia
State Capitol, Room 26-E
Charleston, WV 25305

PEGGY A. LAUTENSCHLAGER
Attorney General
of Wisconsin
State Capitol, Suite 114 East
P.O. Box 7857
Madison, WI 53707-7857

PATRICK J. CRANK
Attorney General of Wyoming
123 State Capitol
Cheyenne, WY 82002

QUESTION PRESENTED

When a state prisoner challenging a state judgment amends a federal habeas corpus petition to include a new claim, does the amendment relate back to the date of the filing of the original petition, and thus avoid the one-year statute of limitations, based on the mere fact that the new claim stems from the prisoner's trial, conviction, or sentence?

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INTEREST OF THE *AMICI CURIAE*

Amici States have a compelling interest in promoting the finality of their criminal convictions. In furtherance of this interest, the Antiterrorism and Effective Death Penalty Act (AEDPA) provides strict time limitations for state prisoners seeking federal habeas corpus relief. Absent specific enumerated exceptions, AEDPA requires prisoners to bring all their claims in one petition within a year of their state convictions becoming final. The Ninth Circuit, however, has construed Federal Rule of Civil Procedure 15(c)(2) in an unreasonably broad manner, which allows prisoners to amend their petitions to add an unlimited number of otherwise time-barred claims and make an end-run around AEDPA's 1-year limitation period. This construction amounts to a substantial judicial repeal of AEDPA's time-limitations. *Amici* States have a compelling interest in preventing such circumvention and ensuring that only timely-raised claims are subject to federal habeas review.

SUMMARY OF ARGUMENT

The Ninth Circuit's unreasonably broad construction of Federal Rule of Civil Procedure 15(c)(2) allows prisoners to add otherwise-time-barred claims even though they do not relate to the claims raised in the original petition. JA 8 ("[A] prisoner's new claim arises out of the same transaction or occurrence as his original petition because the transaction or occurrence in issue is his state trial and conviction."). Although this circumvents AEDPA's 1-year limitation period by allowing prisoners to bring *any* new claim regardless of its relation to the original claim(s), that is not the primary focus of this brief. Rather, the

arguments below demonstrate that the Ninth Circuit's holding is inconsistent with the plain language of Rule 15(c)(2), and inconsistent with the application of the rule in the general civil arena.

First, while the Ninth Circuit has construed Rule 15(c)(2) to allow an amendment to relate back to the original petition so long as it concerns the same trial and sentence, Rule 15(c)(2) only allows a new claim to relate back if it arose out of the same "conduct, transaction, or occurrence set forth" in the original pleading. Although a prisoner necessarily *references* his trial and conviction in a habeas application, the conduct, transaction, or occurrence *set forth* in the petition is that which, if true, would entitle the prisoner to habeas relief. In order to be entitled to habeas relief, a prisoner must allege facts amounting to a violation of a federal right. *See, e.g.*, 28 U.S.C. § 2254, Rule 2(c) (providing that a habeas petition must, *inter alia*, "specify all the grounds for relief available to the petitioner" and "state the facts supporting each ground"). Thus, in the habeas context, the relevant conduct, transaction, or occurrence set forth for purposes of Rule 15(c)(2) is the underlying factual predicate for the alleged violation of a federal right. A new claim, therefore, will only relate back under Rule 15(c)(2) if it arose out of the same set of facts set forth in the original petition.

Second, the Ninth Circuit's definition of "conduct, transaction, or occurrence" conflicts with the generally-accepted view that this phrase relates to the operative or core facts alleged in the original pleading. Indeed, this was the approach taken by this Court 60 years ago when it applied Rule 15(c)(2) in a wrongful death case. *Tiller v. Atlantic Coast Line R. Co.*, 323 U.S. 574, 580-81 (1945). There, both the original and amended claims involved the

death of the deceased at a railroad yard. *Id.* This Court held that the amendment alleging a statutory basis for relief related back when it "related to the same general conduct, transaction and occurrence which involved the death of the deceased." *Id.* at 581.

Consistent with *Tiller*, courts and commentators have given Rule 15(c)(2) a relatively narrow scope. Amendments that merely correct technical deficiencies or expand or modify the facts alleged in the original pleading will relate back, but those that present an entirely new claim for relief will not. *See generally,* 6A WRIGHT & MILLER, FED. PRAC. & PROC: CIV. 2D, § 1497 (2004); *see also Farris v. United States*, 333 F.3d 1211, 1215 (11th Cir. 2003) ("Congress . . . did not inten[d] for [Rule 15(c)] to be so broad to allow an amended pleading to add an entirely new claim based on a different set of facts."). Given these parameters, the general standard has been that relation back is allowed when a new claim arises out of the same operative or core facts alleged in the original claim. A claim in the habeas context is a fact-based assertion that a particular federal right was violated. Amendments clarifying or modifying the facts alleged in the original petition, therefore, relate back, while entirely new claims alleging violations of other rights do not.

As noted by the Fourth Circuit, construing "conduct, transaction, or occurrence" as a prisoner's trial and sentence interprets the relevant events "at too high a level of generality." *United States v. Pittman*, 209 F.3d 314, 318 (4th Cir. 2000). Such a general relationship is an insufficient basis to allow for the relation back of amendments. An employee, for example, may not amend a complaint to add new claims against an employer merely because the claims arose out of the same employer-employee relationship. *See,*

e.g., Nettis v. Levitt, 241 F.3d 186, 193 (2d Cir. 2001) (proposed amendment alleging employment retaliation did not relate back where it was "based on an entirely distinct set of protected employee activity"). Thus, even in the general civil context, Rule 15(c)(2) only allows relation back when there is a specific factual relation between the claims asserted in the new and the original claim.

In sum, both the plain language of Rule 15(c)(2) and the construction of the rule in the general civil arena demonstrate that the Ninth Circuit's interpretation of "conduct, transaction, or occurrence" to mean a prisoner's trial and sentence is untenable.

ARGUMENT

I. IN THE HABEAS CONTEXT, THE "CONDUCT, TRANSACTION, OR OCCURRENCE SET FORTH" IN THE ORIGINAL PLEADING IS THE FACTUAL BASIS FOR THE CONSTITUTIONAL VIOLATION.

Federal Rule of Civil Procedure 15(c)(2) provides: "An amendment of a pleading relates back to the date of the original pleading when . . . the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading."[1] Purporting to apply a "literal

[1] A habeas petition may be amended as provided in the Rules of Civil Procedure. 28 U.S.C. § 2242. The "original habeas petition," therefore, would be the "original pleading" referenced in Rule 15(c)(2). *See Woodford v. Garceau*, 538 U.S. 202, 208 (2003) ("[A] habeas suit begins with the filing of an application for habeas corpus relief – the equivalent of a complaint in an ordinary civil case.").

application of Rule 15(c)," the Ninth Circuit held that, in the habeas context, "conduct, transaction, or occurrence" encompasses a petitioner's entire "trial and conviction." JA 11. This, however, misconstrues Rule 15(c)(2)'s limiting parameters.

1. The application of Rule 15(c)(2) in the habeas context necessarily involves a determination of what conduct, transaction, or occurrence is "set forth" in a habeas petition. This is controlled by Habeas Rule 2(c), which provides, *inter alia*, that a habeas petition must: "(1) specify all the grounds for relief available to the petitioner; [and] (2) state the facts supporting each ground." 28 U.S.C. § 2254, Rule 2(c).[2] Rule 2(c)'s fact-pleading requirement is incorporated into the *pro se* form annexed to the Rules Governing Section 2254 in the United States District Courts:

> CAUTION: You must include in this petition all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

28 U.S.C. § 2254, Petition for Relief from a Conviction or Sentence By a Person in State Custody (Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus), at 1 (original emphasis); *see also id.* at 6 (instructing prisoners to "[s]tate the *facts* supporting each ground" and informing

[2] The former version of the rule similarly provided that a habeas petition "shall specify all the grounds for relief . . . and shall set forth in summary form the facts supporting each of the grounds thus specified." 28 U.S.C. § 2254, Rule 2(c) (amended effective Dec. 1, 2004).

them they are not required to "argue or cite law," but rather are only required to "state the specific facts that support" each claim) (original emphasis); *see also McFarland v. Scott*, 512 U.S. 849, 856 (1994) (citing 28 U.S.C. § 2254 Rule 2(c) and stating that "[h]abeas corpus petitions must meet heightened pleading requirements").

As observed in the comments to Habeas Rule 2(c), "it is the relationship of the facts to the claim asserted that is important" in a habeas petition. 28 U.S.C. § 2254, Rule 2(c) Advisory Committee Notes; *see also* 28 U.S.C. § 2254, Rule 4 Advisory Committee Notes ("[N]otice pleading is not sufficient, for [a habeas] petition is expected to state facts that point to a real possibility of constitutional error.") (citation and internal quotations omitted); 1 R. HERTZ & J. LIEBMAN, FEDERAL HABEAS CORPUS PRACTICE AND PROCEDURE § 11.6 (3d ed. 1998) (noting that the "fact pleading" requirement of the habeas rules is more stringent than "notice pleading" and requires petitioners to "at least summarily plead specific facts supporting each claim for relief").

Indeed, a habeas petition that does not set forth a factual basis for a claim is subject to dismissal. *See McFarland*, 512 U.S. at 856 ("Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face. . . ."); *see also Hill v. Lockhart*, 474 U.S. 52, 60 (1985) (affirming dismissal of a habeas petition without a hearing when it did not allege sufficient facts to demonstrate the prejudice required for an ineffective assistance of counsel claim); *James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994) ("Conclusory allegations which are not supported by a statement of specific facts do not warrant habeas relief."); *see also* WRIGHT & MILLER, 5 FED. PRAC. & PROC. CIV. 3D § 1241.1, at 420 (2004) ("A

petition for a writ of habeas corpus has been held insufficient if it alleges conclusions that are not supported by facts."). Therefore, given the fact-specific pleading requirements of a habeas petition, the "conduct, transaction, or occurrence set forth" in a petition necessarily refers to the *facts* set forth in the petition.

2. Even if the fact-pleading requirements of Habeas Rule 2(c) are not considered, the Ninth Circuit's holding still ignores Rule 15(c)'s requirement that, in order to relate back, a new claim must arise from the conduct, transaction or occurrence "set forth" in the original pleading. Fed. R. Civ. P. 15(c)(2). *See* MERRIAM WEBSTER'S COLLEGIATE DICTIONARY, 1071 (10th ed. 1995) ("set forth" means "to give an account or statement of"). Any type of pleading document must set forth some type of claim by alleging minimal facts that support a cognizable ground for relief. *See, e.g.*, Fed. R. Civ. P. 8(a)(2) ("A pleading which sets forth a claim for relief . . . shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief. . . ."); *see also Conley v. Gibson*, 355 U.S. 41, 47 (1957) (noting that even under the current liberal pleading requirements, a complaint must nonetheless "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests"). The conduct, transaction, or occurrence set forth in any pleading document, therefore, is the factual scenario a particular claim is predicated upon. *See, e.g., O'Loughlin v. Nat'l R.R. Passenger Corp.*, 928 F.2d 24, 27-28 (1st Cir. 1991) (noting that in cases where amendments are allowed under Rule 15(c)(2), "it was the allegations in the complaints that provided the most substantial notice of the transaction or occurrence at issue"). A new claim, therefore, can only

relate back if it arose from the factual basis that underpins the claim(s) set forth in the original pleading.

A habeas claim is predicated on specific facts alleging a violation of a federal right. *See. e.g., Engle v. Issac*, 456 U.S. 107, 119 (1982) (a challenge to a state court's evidentiary ruling is not cognizable in a habeas petition because it alleges "no deprivation of federal rights"); *see also* 28 U.S.C. § 2244(b)(2)(B) (using the term "factual predicate" in reference to second or successive petitions). In other words, a habeas claim is no claim at all if it does not contain sufficient facts to allege a violation of federal rights. Therefore, a habeas petition that merely "set forth" a prisoner's "trial and conviction" would clearly be insufficient. *See, e.g., Adams v. Armontrout*, 897 F.2d 332, 333 (8th Cir. 1990) ("We do not believe that 28 U.S.C. § 2254 or the Section 2254 Rules require the federal courts to review the entire state court record of habeas corpus petitioners to ascertain whether facts exist which support relief.") (collecting cases). Thus, although a habeas petition may *reference* the prisoner's trial and sentence, the trial and sentence are not the relevant conduct, transaction, or occurrence *set forth* as a basis for a constitutional claim. Indeed, a majority of Circuit Court of Appeals have come to this conclusion in determining the scope of Rule 15(c)(2) to cases arising under 28 U.S.C. § 2255. *See United States v. Hicks*, 283 F.3d 380, 388 (D.C. Cir. 2002); *Dean v. United States*, 278 F.3d 1218, 1221 (11th Cir. 2002); *Woodward v. Williams*, 263 F.3d 1135, 1142 (10th Cir. 2001); *United States v. Pittman*, 209 F.3d 314, 317-18 (4th Cir. 2000); *United States v. Duffus*, 174 F.3d 333, 337-38 (3d Cir. 1999); *United States v. Craycraft*, 167 F.3d 451, 457 (8th Cir. 1999).[3]

3. By ignoring the requirement that the relevant "conduct, transaction, or occurrence" be *set forth* in the original pleading, the Ninth Circuit ignores the context in which these terms are used. *See Whitman v. American Trucking Associations*, 531 U.S. 457, 466 (2001) ("Words that can have more than one meaning are given content . . . by their surroundings. . . ."). Since all pleadings have *some* factual basis, "conduct," in the context of a pleading requirement, can only mean particular behavior that forms the basis for a claim. *See, e.g.*, BLACK'S LAW DICTIONARY, 295 (6th ed. 1990) (defining "conduct" as: "Personal behavior; deportment; mode of action; any positive or negative act."); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, 474 (1986) (defining "conduct" as "behavior in a particular situation"). In the habeas context, the word "conduct" can readily be applied to specific action by the state, counsel, or the trial court, which allegedly constitutes a violation of federal or constitutional rights. *See, e.g., Banks v. Dretke,* 540 U.S. 668, 696 (2004) (discussing the "conduct" of a prosecutor as relevant to a *Brady* violation); *Thompson v. Keohane*, 516 U.S. 99, 100 (1995) (discussing a "law enforcement officer's conduct" in regard to *Miranda* issue); *Purkett v. Elem,* 514 U.S. 765, 768 (1995) (discussing trial judge's role in deciding *Batson* challenges); *Strickland v. Washington,* 466 U.S. 668, 686

[3] Although some of these decisions discuss the ramifications of an overly-broad construction of Rule 15(c)(2) to AEDPA's limitations periods, ultimately their holdings rest on a plain application of the rule. *See, e.g., Craycraft*, 167 F.3d at 457 ("Failing to file an appeal is a separate occurrence in both time and type from a failure to pursue a downward departure or failure to object to the type of drugs at issue.").

(1984) (discussing defense counsel's "conduct" in the context of an ineffective assistance of counsel claim). Thus, in the habeas context, "conduct" necessarily means the specific factual basis for a particular constitutional claim.

The ordinary meaning of "transaction," on the other hand, "necessarily implies some type of business dealing between parties." *Hawthorne v. Mac Adjustment, Inc.*, 140 F.3d 1367, 1371 (11th Cir. 1998); *see also* BLACK'S, at 1496 (defining "transaction" as the "[a]ct of transacting or conducting any business;"); WEBSTER'S NEW WORLD DICTIONARY, 1509 (2d ed. 1986) (defining "transaction" as "a business deal or agreement"). A criminal trial is simply not a "transaction" in any usual sense of the word. *See* BLACK'S, at 1504 (defining trial as "[a] judicial examination and determination of issues between parties to action, whether they be issues of law or of fact, before a court that has jurisdiction."). Thus, the term "transaction," as used in Rule 15(c)(2), has no ready application in habeas proceedings.

Granted, out of context, the flexible word "occurrence" can be broadly construed to include a criminal trial. *See* BLACK'S, at 1080 (defining "occurrence" to include "[a]ny incident or event"). Context, however, is particularly important where a term is pliable. *See, e.g., Leocal v. Ashcroft*, ___ U.S. ___, 125 S. Ct. 377, 382 (2004) ("Particularly when interpreting a statute that features as elastic a word as 'use,' we construe language in its context and in light of the terms surrounding it."). Rule 15(c)(2) references "conduct, transaction, or occurrence" as events set forth in an original pleading. The relevance of the conduct, transaction, or occurrence is that it provides the basis for legal action. *Cf.* Fed. R. Civ. P. 10(b) ("Each claim founded upon a separate transaction or occurrence ... shall be

stated in a separate count ... whenever a separation facilitates the clear presentation of the matters set forth."). Thus, although a broad definition of "occurrence" could conceivably encompass a trial, in the context of Rule 15(c)(2), the occurrence set forth in a habeas petition is necessarily a specific violation of a federal right.

The conclusion that "occurrence," as used in Rule 15(c)(2), should not be construed to give it unlimited scope is supported by the doctrine of *noscitur a sociis*, which means that "a word is known by the company it keeps." *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 575 (1995). This doctrine avoids "ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving [a statute] unintended breadth." *Id.* (internal quotations and citation omitted). This doctrine, in turn, is complemented by "the rule against superfluities," which "instructs courts to interpret a statute to effectuate all its provisions, so that no part is rendered superfluous." *Hibbs v. Winn*, ___ U.S. ___, 124 S. Ct. 2276, 2286 (2004). If "occurrence" is construed so broadly as to include any incident or event (including a trial, conviction, or sentence), the terms "conduct" and "transaction" would be rendered superfluous because the "occurrence" alone "would do all the necessary work." *Id.* Thus, because "conduct" and "transaction" are terms that denote specific facts, "occurrence," too, must be also be construed to denote a "particular occurrence" which forms a claimed basis for relief. *Cf. Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 150 n.3 (1984) (noting that the rationale of the relation back allowed by Rule 15(c) is that a party has been given notice of a "*particular* occurrence") (emphasis added).

Further, in construing "conduct, transaction, or occurrence," it is noteworthy that a claim also relates back when it arises out of the "conduct, transaction, or occurrence . . . *attempted to be set forth* in the original pleading." Fed. R. Civ. P. 15(c)(2) (emphasis added). Thus, the Rule recognizes that, in some instances, an initial claim may not be cognizable because of the lack of factual specificity. This highlights that the facts or allegations in a pleading must not merely reference some general relationship between two parties or some general background context, but rather must set forth sufficient specific conduct that constitutes a cognizable claim.

In short, the Ninth Circuit construed the phrase "conduct, transaction, or occurrence" at "too high a level of generality." *Pittman* 209 F.3d at 318. Because a prisoner is required to plead facts to support a claim for habeas relief based on a specific constitutional violation, it is those facts that constitute the relevant "conduct, transaction, or occurrence" for purposes of Rule 15(c)(2). The Ninth Circuit erred, therefore, when it construed Rule 15(c)(2)'s relation back provision to encompass the entirety of a prisoner's trial and sentence, regardless of the facts set forth in the initial application.

II. RELATION BACK UNDER RULE 15(C)(2) HAS ALWAYS BEEN INTERPRETED TO REQUIRE A COMMON FACTUAL NEXUS BETWEEN THE AMENDED CLAIMS AND THE ORIGINAL CLAIMS.

1. Although the above analysis largely focuses on the fact-pleading requirements in habeas proceedings, courts and commentators have always construed Rule 15(c)(2) to require a factual nexus between the amended and the

original claims. Indeed, this was the approach taken by the courts even prior to the 1938 effective date of the Federal Rules of Civil Procedure. As this Court recently noted, the concept of "relation back" existed as an equitable doctrine prior to the adoption of the Rules of Civil Procedure. *Scarborough v. Principi*, ___ U.S. ___, 124 S. Ct. 1856, 1867 (2004). In discussing the history of the doctrine, *Scarborough* cites three pre-1938 train-injury cases, each of which allowed a plaintiff to amend a wrongful death complaint to add a claim – based on the same facts – that the death violated the Employers' Liability Act. *Id.*[4] Consistent with this pre-Rule precedent, this Court subsequently construed Rule 15(c)(2) to allow a plaintiff to add a new theory of recovery for a wrongful death action where both the original and amended claims sought "to recover damages for the alleged wrongful death of the deceased." *Tiller v. Atlantic Coast Line R. Co.*, 323 U.S. 574, 580-81 (1945). Applying the language of Rule 15(c)(2), the Court stated that the allegations in both claims "related to the same general conduct, transaction and occurrence which involved the death of the deceased." *Id.*

More recently, this Court commented, albeit in passing, that for the purposes of Rule 15(c)(2), an amendment

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[4] *See New York Central & Hudson River R. Co. v. Kinney*, 260 U.S. 340, 346 (1922) (amended complaint related back to wrongful death action because the amendment merely "expanded or amplified" the conduct alleged in the original claim); *Seaboard Air Line R. Co. v. Renn*, 241 U.S. 290, 293-94 (1916) (allowing amendment where "[t]he facts constituting the tort were the same" as originally set forth); *Missouri, K. & T.R. Co. v. Wulf*, 226 U.S. 570, 575-76 (1913) (allowing amendment that did not "modify[ ] or enlarg[e] the facts upon which the action was based").

relates back if it concerns "a particular occurrence" noticed in the original pleading. *Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 150 n.3 (1984). This comment was followed by an admonition that, even under a liberal pleading standard, a pleading must "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Id.* (citing *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). Therefore, this Court's limited discussion of Rule 15(c)(2) has been consistent with the general, narrow scope that Rule 15(c) is given by the commentators:

> [A]mendments that merely correct technical deficiencies or expand or modify the facts alleged in the earlier pleading meet the Rule 15(c) test and will relate back. Thus, amendments that do nothing more than restate the original claim with greater particularity or amplify the details of the transaction alleged in the preceding pleading fall within Rule 15(c). But, if the alteration of the original statement is so substantial that it cannot be said that [the other party] was given adequate notice of the conduct, transaction, or occurrence that forms the basis for the claim or defense, then the amendment will not relate back and will be time barred if the limitations period has expired.

6A WRIGHT & MILLER, FED. PRAC. & PROC. CIV. 2D § 1497, at 74-79 (1990); *see also Farris v. United States*, 333 F.3d 1211, 1215 (11th Cir. 2003) ("Congress intended Rule 15(c) to be used for a relatively narrow purpose; it did not inten[d] for the rule to be so broad to allow an amended pleading to add an entirely new claim based on a different set of facts."); Fed. R. Civ. P. 15, Advisory Committee Note to the 1991 amendments ("the rule has been revised to prevent parties against whom claims are made from

taking unjust advantage of otherwise inconsequential pleading errors to sustain a limitations defense."); 27A FEDERAL PROCEDURE: LAWYERS EDITION § 62:338 p. 129 (1996) ("[A] new and totally unrelated cause of action will not relate back."); 3 J. MOORE, *Moore's Federal Practice* ¶ 15.15[3], at 15-147 to 149 (2d ed. 1985) ("[A]n amendment which states an entirely new claim for relief based on different facts will not relate back.").

2. Consistent with Rule 15(c)'s generally-recognized narrow scope, in order to relate back an amended claim must contain the same set of core or operative facts as contained in the original pleading. *See, e.g., Bensel v. Allied Pilots Ass'n*, 387 F.3d 298, 310 (3d Cir. 2004) ("In essence, application of Rule 15(c) involves a search for a common core of operative facts in the two pleadings."). Thus, Rule 15(c)(2)'s "arising out" approach to relation back allows courts "to measure the allegations of the amended pleading against the relatively concrete datum of operative facts" in the original complaint. HAROLD S. LEWIS, JR., *The Excessive History of Federal Rule 15(c) and its Lessons for Civil Rules Revision*, 85 MICH. L. REV. 1507, 1513 (1987); *see also* 27A FEDERAL PROCEDURE: LAWYERS EDITION § 62:336, at 127 (1996) ("The District Court should analyze the original complaint and proposed amendment in order to determine whether they shared a common core of operative facts sufficient to impart fair notice of the transaction, occurrence, or conduct called into question."). Indeed, the Ninth Circuit generally applies the "operative facts" test to determine if an amendment relates back. *See, e.g., F.D.I.C. v. Jackson*, 133 F.3d 694, 702 (9th Cir. 1998) (stating that a district court should compare the amended claim to the original pleading "to determine whether they share a common core of operative

facts sufficient to impart fair notice of the transaction, occurrence, or conduct called into question") (internal quotation and citation omitted); *Martell v. Trilogy Ltd.*, 872 F.2d 322, 326 (9th Cir. 1989) (allowing relation back "where the facts originally alleged against [the defendant] share[d] a common core of operative facts" with those in the amended pleading).

The Ninth Circuit rejected this approach in the instant case, however, because it believed it would render Rule 15(c)(2) "virtually meaningless in the habeas context." JA at 11. Apparently, therefore, the Ninth Circuit recognized the correct standard, but decided to apply a different one so that Rule 15(c)(2) is more readily available in the habeas context. As this Court has stated in considering Rule 15(c)(3), however, a Rule of Civil Procedure should be construed as "meaning what it says." *Schiavone v. Fortune*, 477 U.S. 21, 30 (1986) (declining to chose between a "liberal" and "technical" approach toward Rule 15(c)(3) and, instead, accepting "the Rule as meaning what it says"). What Rule 15(c)(2) says is that new claims relate back only if they arose from the same "conduct, transaction, or occurrence set forth" in the original pleading – it does not say that new claims relate back if they have "some general relation" to that pleading.

3. Further, a straight-forward application of Rule 15(c)(2) does have a place in the habeas context. *See, e.g.*, *Mandacina v. United States*, 328 F.3d 995, 1000-01 (8th Cir. 2003) (amended *Brady* claim concerning particular report related back to original *Brady* claim that government failed to disclose investigative information obtained by a particular police department); *Mederos v. United States*, 218 F.3d 1252, 1253-54 (11th Cir. 2000) (second § 2255 motion that corrected technical deficiencies related back to the original motion); *Lawton v. United States*, 184 F. Supp. 2d 419, 424 (E.D. Pa. 2002) (amended claim that "amplified" the facts in the original petition related back). Rule 15(c)(2), however, should not be stretched in the habeas proceedings merely so that it will have greater application than the language of the rule itself provides.[5]

Given the unique nature of habeas proceedings, it is only to be expected that Rule 15(c)(2) will have a somewhat limited role. The typical claims governed by the Federal Rules of Civil Procedure have not previously been processed through state court proceedings. In contrast, the *only* claims that can form the basis for habeas relief are those that *have been presented* to the state courts. *See Gray v. Netherland*, 518 U.S. 152, 162-63 (1996) ("[F]or purposes of exhausting state remedies, a claim for relief in habeas corpus must include reference to a specific federal constitutional guarantee, as well as a statement of the facts that entitle the petitioner to relief."); *see also Kelly v. Small*, 315 F.3d 1063, 1066 (9th Cir. 2003) ("The state prisoner must describe in the state proceedings both the *operative facts* and the federal legal theory on which his claim is based so that the state courts have a 'fair opportunity' to apply controlling legal principles to the facts bearing upon his constitutional claim.") (emphasis added). Thus, unlike a civil litigant, who may develop a new theory of relief through discovery, as well as the factual

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[5] Habeas Rule 11 provides: "The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules." 28 U.S.C. § 2254, Rule 11. The Ninth Circuit's analysis, however, turns Rule 11 on its head by expanding the scope of a Federal Rule of Civil Procedure so it will have greater applicability than the language of the Rule itself permits.

basis thereof, habeas litigants are generally in a position to know their grounds for relief when they come to federal court. It is only to be expected, therefore, that Rule 15(c)(2) will have a more limited application in habeas proceedings.

4. In reaching its conclusion that conduct, transaction, or occurrence means a prisoner's "trial and sentence," the Ninth Circuit relied heavily on the Seventh Circuit's decision in *Ellzey v. United States*, 324 F.3d 521 (7th Cir. 2003). In *Ellzey*, the Seventh Circuit acknowledged that a habeas petition requires "fact pleading," but nevertheless concluded that "[a] prisoner who comes up with ten different ways to contest his sentence still is litigating about a single transaction or occurrence (the supposedly unlawful sentence)."[6] 324 F.3d at 524, 526. A state prisoner, however, is not "litigating about" his trial or sentence, he is "litigating about" a claimed violation of a federal right. As discussed in Section I, *supra*, a prisoner who merely "sets forth" his trial and sentence as a basis for relief does not state a cognizable habeas claim. Thus, like the Ninth Circuit, the Seventh Circuit ignored Rule 15(c)(2)'s requirement that, in order to relate back, an amendment must arise out of the "conduct, transaction, or occurrence set forth" in the original pleading, which, in the habeas context, is the claimed violation of rights.

[6] *Ellzey* effectively overruled a Seventh Circuit decision adopting the view taken by the other circuits, namely, that in order for a claim to relate back, it must have "more in common with the timely filed claim than the mere fact that they arose out of the same trial and sentencing proceedings." *Rodriguez v. United States*, 286 F.3d 972, 980 (7th Cir. 2002) (citing *Dean v. United States*, 278 F.3d 1218, 1221 (11th Cir. 2002)).

Again, at bottom, construing a trial (or sentencing) as the relevant event for the purposes of Rule 15(c)(2) improperly interprets conduct, transaction, or occurrence "at too high a level of generality." *Pittman* 209 F.3d at 318. Courts have refused to allow a claim to relate back where there is no relation to the original claim other than being part of some general overall dispute between the parties. *See, e.g., Nettis v. Levitt*, 241 F.3d 186, 193 (2d Cir. 2001) (proposed amendment alleging employment retaliation did not relate back where it was "based on an entirely distinct set of protected employee activity"); *Tahoe Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 34 F.3d 753, 755 as amended, 42 F.3d 1306 (9th Cir. 1994) (property owners' amended claims against regional planning agency concerning a second plan did not relate back to the original complaint based on the first plan); *McGregor v. Louisiana State Univ. Bd. of Sup'rs*, 3 F.3d 850, 863-64 (5th Cir. 1993) (amended claim alleging due process violations in regard to denial of request to go to law school on part-time basis did not relate back to original complaint alleging law school failed to reasonably accommodate disability); *Matter of Unroe*, 937 F.2d 346, 349 (7th Cir. 1991) (IRS could not amend tax claim for one year to include new claims for additional years that would otherwise be barred by the statute of limitations); *Forzley v. AVCO Corp. Elec. Div.*, 826 F.2d 974, 981-82 (11th Cir. 1987) (holding that a claim "for retroactive overtime pay did not arise out of the transaction or occurrence of the original complaint," which was for breach of contract). *Brown v. United States*, 271 F. Supp. 2d 225, 230 (D.D.C. 2003) (employee's amended complaint alleging breach of settlement agreement did not relate back to her timely filed original complaint alleging race discrimination because the two matters did not deal with the same

nucleus of facts, time periods, or legal theories); *Seidel v. Lee*, 954 F. Supp. 810, 815 (D. Del. 1996) (eight separate investment transactions did not relate back to original complaint because defendants lacked adequate notice there would be claims based on additional transactions); *Burt v. CBS, Inc.*, 769 F. Supp. 1012, 1015-16 (S.D. Ohio 1990) (second-amended complaint, which first set forth defamation claim arising out of third television broadcast program regarding plaintiff's medical practice, did not relate back to filing date of original complaint which asserted claims arising out of only two previous broadcasts of program because each broadcast constituted a distinct cause of action for defamation); *Monks v. Marlinga*, 732 F. Supp. 749, 754 (E.D. Mich. 1990) (claim of former prosecutors that he was slandered following termination did not arise out of conduct, transaction, or occurrence set forth in original pleading challenging discharge); *Holmes v. Greyhound Lines, Inc.*, 757 F.2d 1563, 1566 (5th Cir. 1985) (amended complaint alleging that union breached duty of fair representation did not relate back to original complaint alleging arbitration award should be set aside because of arbitrators' conduct).

5. Finally, because a federal habeas claim must allege facts amounting to a violation of federal law, § 1983 cases addressing Rule 15(c)(2) are particularly instructive. *Cf. Nelson v. Campbell*, 541 U.S. 637, 124 S. Ct. 2117, 2122-25 (2004) (noting the similarities of a habeas claim and a § 1983 claim); *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973) (holding that, although "the literal terms of § 1983" would appear to cover habeas challenges, the more specific habeas statutory scheme controls where prisoners challenge the fact or length of their confinement). Consistent with the above analysis, these cases have allowed an

amendment to relate back to the original complaint *only* if it arose out of the specific conduct, transaction, or occurrence that forms the basis for the specific constitutional violation. *Compare Jackson v. Suffolk County Homicide Bureau*, 135 F.3d 254, 256 (2d Cir. 1998) (even though § 1983 claims generally arose out of the same state-court criminal proceedings, plaintiff's First Amendment claims did not relate back because they did not arise out of the same conduct as the excessive force claim); *Hooper v. Sachs*, 618 F. Supp. 963, 977 (D. Md. 1985) (amended § 1983 claim alleging illegal search and seizure did not relate back to complaint alleging unlawful prosecution claims because they were not based on the same "operational facts"), *with Ripley v. Childress*, 695 F. Supp. 507, 511-12 (D.N.M. 1988) (with one exception, amendments to arrestee's civil rights complaint would relate back to date of original complaint because they did not change the factual allegations in the original complaint in any substantial manner); *Barrett v. United States*, 622 F. Supp. 574, 592 (S.D.N.Y. 1985) (allowing plaintiff to amend § 1983 action to add a *Bivens* claim was permissible because the claims paralleled each other and, thus, constituted the "same transaction or occurrence").

In sum, both the plain language of Rule 15(c)(2) and the consistent application of the rule in the general civil arena demonstrate that the Ninth Circuit erred when it concluded that "the conduct, transaction, or occurrence set forth" in a habeas petition encompasses a state prisoner's entire trial, conviction, and sentence.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

TERRY GODDARD
Attorney General of the State of Arizona

MARY O'GRADY
State Solicitor General

RANDALL M. HOWE
Criminal Appeals Section Chief

MICHAEL O'TOOLE
Assistant Attorney General and
(*Counsel of Record*)
1275 W. Washington St.
Phoenix, AZ 85007
(602) 542-8593

Of Counsel:

DAN SCHWEITZER
750 First St., N.E.
Washington, D.C. 20002
(202) 326-6010